

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8298 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

THOSHAVARA CHUNILAL DAYARAMJI

Versus

STATE OF GUJARAT

Appearance:

MR BD KARIA for Petitioner

MR S.R. Divetia for Respondent No. 1, 4

Mr. B.T. Rao for MR SUNIL C PATEL for Respondent No. 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 06/03/98

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner calls in question the order of detention dated 29-9-1997 passed by the District Magistrate, Bhavnagar District at Bhavnagar invoking his powers under Section 3(2) of the Prevention of Black Marketing and Maintenance and Supplies of

Essential Commodities Act, 1980(for short " the Act").

2. Few facts in order to appreciate the rival contentions may in brief be stated: The petitioner is a shopkeeper in Manekwadi area of Bhavnagar City. He deals in kerosene which is an essential commodity. As per the licence issued to him he was bound to sell kerosene to the car holders periodically at the rates fixed by the Government. However, the District Magistrate came to know that the petitioner was by adopting several malpractices diverting the kerosene elsewhere so as to satisfy his profiteering motive.

3. On 22nd August, 1997 the District Supply Officer carried out necessary inspection and found that the petitioner had not maintained his stock register and even the bill books. It was also found that kerosene processed was taken illegally with the help of Babulal Kaniram and some unknown persons. The petitioner was also found receiving the quota of kerosene illegally and was converting the same into white coloured kerosene by chemical process and was then diverting the same to the others for profiteering motive and encouraging black economy. The books of accounts were not correctly written so as to conveniently indulge in malpractices and black economy. With the result, the public were deprived of the kerosene and were put to several hardships. The District Supply Officer and his team carrying out the inspection could see that the petitioner had committed breach of the terms and conditions of the licence issued to him and Section 7 and 9 of the Essential Commodities Act. The relevant record was then sent to the District Magistrate. The District Magistrate on further inquiry and recording some statements found that petitioner was not selling to the people the kerosene as per the schedule fixed and was as reported encouraging black economy by diverting quota of the kerosene he used to receive under the licence. To check his such malpractices stern action was necessary. The District Magistrate after a careful study found that the detention of the petitioner was the only way out to check his malpractices and black economy. The impugned order then came to be passed consequent upon which the petitioner came to be arrested and at present is under detention.

4. On several grounds the order of detention has been challenged. One of such grounds is that the petitioner does not know Gujarati language but knows Hindi language. However, he was supplied with necessary documents in Gujarati, as a result, he being ignorant of the language could not make effective representation and

decide whether any defence was available to him and, if so, what? When his right to representation is accordingly impaired, the order of detention and continued detention are illegal.

5. Mr. Divetia, the learned Additional Public Prosecutor has submitted that the petitioner sent his representation in Gujarati language which shows that the petitioner knows Gujarati, but he is with a view to have his discharge any how pretending under the guise of ignorance of the language in which the statements and documents were supplied to him. Mr. Rao, learned A.P.P. on behalf of the opponent no.3 submitted that the Union of India accepted the representation from the State Government and had undergone all required formalities and that there was no lapse on the part of the Union of India. Both have in short canvassed that the petitioner shedding crocodile-tears may be dealt with roundly so as to set an example.

6. Before I proceed, the legal position made clear in the pronouncements of the Supreme Court is required to be borne in mind. In the case of Surjitsing vs. Union of India, AIR 1981 SC 1153 what is made clear is that the grounds of detention are required to be supplied to the detenu in the language known to him, i.e. in the language he is conversant so as to enable him to make effective representation and afford a real opportunity for the same. If that is not done and the documents and grounds in the language other than known to the detenu are supplied to him the detention in that case must be considered to be illegal. In another case of Mrs. Tsering Dolkar v. The Administrator, Union Territory of Delhi and others, AIR 1987 Supreme Court 1192 holding likewise it is made clear that the detenu has to be informed about the grounds of detention in the language which he understands. The fact that detenu's wife knew the language in which the grounds were framed will not satisfy the legal requirement. In the matter of prevention detention the test is not one of breaches but one of strict compliance of the provisions of the Act and when there is a failure to comply with those requirements it becomes difficult to sustain the order. What can be deduced from these two decisions is that the grounds of detention are required to be communicated in the language known to the detenu and if that is not done the detention must be held to be illegal.

7. The petitioner has come out with a case that he does not know Gujarati language while the documents supplied to him are in Gujarati language. Whether he

knows the Gujarati language is a matter in controversy because on behalf of the State of Gujarat, it is submitted that the petitioner made his representation in Gujarati language which is possible only when he knows Gujarati. But shedding crocodile tears he wants to misguide the Court and have the order of his release which should be frowned upon. Against such submission, the clarificatory submission of the petitioner is that he got the representation prepared in Gujarati language by taking the assistance of Mr. L.H. Dave knowing Gujarati language. In support of his say, he has also filed the affidavit of Mr. L.H. Dave who has categorically stated that as the petitioner does not know Gujarati language he prepared the representation in Gujarati taking instructions from him, typed out in Gujarati and sent the same taking the signature of the petitioner.

8. Out of the copies of documents the petitioner received from District Magistrate, Bhavnagar, Mr. Karia, learned Advocate representing the petitioner showed me the copies of two statements one dated 8-9-1997 and another dated 17-9-1997 recorded by the authority in Gujarati. Below the statement dated 8-9-97 while signing, the petitioner has made the endorsement in Hindi to the effect that no doubt he signs the statement but he does not know Gujarati language and the Supply Inspector had read over and explained the statement recorded. No note at that time protesting such endorsement is made by the authority if he at all found that the petitioner was knowing Gujarati but was with ulterior motive pretending to be ignorant. Below the statement dated 17-9-1997 he has got made the endorsement stating that whatever is stated hereinabove is true, and he does not want to say anything more in the matter. These two endorsements as well as the affidavit of Shri L.H. Dave show that the petitioner does not know Gujarati. He might be understanding if someone speaks in Gujarati but he does not know how to read or write Gujarati. Ofcourse on the basis of the statement dated 17-9-1997, it is submitted on behalf of the State of Gujarat that the endorsement made by the petitioner below that statement would show that the petitioner was knowing Gujarati. On the basis of that endorsement, it will not in my view be just and proper to conclude as canvassed for the procedure in the offices in Gujarat cannot be overlooked. In whatever language the statement is made, the officer will record in the State language. It is quite possible that the officer recorded in Gujarati though the petitioner stated in Hindi or incorrect or erratic Gujarati, or making medley of both Gujarati and Hindi. True the affidavit in reply sworn in by Mr.V.D.Vyas, District Supply Officer is

filed by the State of Gujarat but therefrom it cannot be said that the petitioner though knowing Gujarati, has pretended so as to have discharge any how. It may be noted that Mr. V.D. Vyas mainly relies on the above referred statement dated 17-9-1997 which cannot be made a base to draw a definite conclusion. Further it is made clear in the affidavit that when the Police Inspector served the order of detention he found that the petitioner was understanding Gujarati language. But that also cannot support the authority and otherside. By mere understanding a language, it cannot be said that a person is knowing a particular language so as to perceive the subject at issue clearly and take a decision. Because of his long stay in particular region/ area he would to an extent understand may be with difficulty the language spoken in that area, but would not be in a position to read and write that language and take his prudent or just decision, he would remain perplexed. It is not made clear in the affidavit that the petitioner can read and write Gujarati and on that point Mr. Vyas has conveniently remained silent. Admittedly the petitioner is non Gujarati and there is nothing on record to know that he has grasped Gujarati well. From all these facts appearing on the record, it is clear that the petitioner might be understanding Gujarati but he is not knowing how to read and write. Unless the person knows how to read and write the language, it would not be possible for him to make effective representation. In this case, when the ground of detention are supplied in the language not known to the petitioner, it is obvious that he did not get real opportunity of making the representation against the order of detention. In view of the above referred two decisions of the Supreme Court, therefore, the detention must be held to be illegal.

8. For the aforesaid reasons, the present application is allowed. The order of detention dated 29th September, 1997 passed by the District Magistrate, Bhavnagar is hereby quashed and set aside and the petitioner is ordered to be set at liberty forthwith if no longer required in any other case. Rule is made absolute.

sf-hrs

